

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

COMMITTEE ON TRANSPORTATION AND TELECOMMUNICATIONS
January 17, 2006
LB 895, 832, 853, 947, 801

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, January 17, 2006, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 895, LB 832, LB 853, LB 947, and LB 801. Senators present: Tom Baker, Chairperson; Adrian Smith, Vice Chairperson; Ray Aguilar; Pam Brown; Mike Foley; Dwite Pedersen; and Arnie Stuthman. Senators absent: Carol Hudkins.

SENATOR BAKER: We're going to go ahead and begin our hearing. I want to welcome everyone to the Transportation and Telecommunications Committee hearings for January 17. I'm already getting notes...oh, wrong note. I think most of you are veterans but we'll go through the rules. Any cell phones, we'd like to have you turn them off so we aren't distracted during testimony or questions by cell phones. Senator Langemeier has the drill down well, stay in line, keep the process moving. We obviously don't have a lot of controversial bills today but we do have several senators with other meetings and things we have to attend here shortly. So try and keep it going. If you have written testimony, you can bring it up to the pages. Let the pages know if you have things to hand out, let the pages know. We do have two new pages this year. I'd like to introduce Kate Wolford, standing, from McCook, one of my constituents. And we have Kate Apostolova from Bulgaria, who's a student at UNL. So we have an international flavor to the committee for today. And, with that, they will be most helpful but they are both new, so a little patience. But if you do need something, let them know. They will be helpful. The committee, it looks like we're about all here. We'll go ahead and introduce the committee. Senator Mike Foley from Lincoln. Senator Adrian Smith, our Vice Chairman, from Scottsbluff/Gering. My far right, Senator Dwite Pedersen from Elkhorn yet, isn't it? I believe...

SENATOR DW. PEDERSEN: Yeah.

SENATOR BAKER: Elkhorn?

SENATOR BROWN: For a while.

SENATOR DW. PEDERSEN: It'll be that way, the way it looks.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 2

LB 895

(Laughter)

SENATOR BAKER: From Elkhorn.

SENATOR DW. PEDERSEN: We don't have to worry about this one city, one school now because we're going to win the lawsuit, we'll be out of it.

SENATOR BAKER: I just introduced you, no speeches, no speeches, Senator Pedersen. (Laughter) Senator Pam Brown from Omaha. Senator Arnie Stuthman from Platte Center, or is it river? Platte Center. Senator Ray Aguilar from Grand Island. And committee legal counsel is Jill Becker, clerk is Pauline Bulgrin. I'm Tom Baker from Trenton. This says Senator Hudkins will not be here, so don't anticipate Senator Hudkins being here. I don't know quite where she is. But we will begin with...oh, one other thing. If you have a, please spell your first and last name, your first name if it's a name that could be spelled several different ways. I don't know who intends on testifying. But if you can spell your name a different way than might be considered the most common, why, please spell your first name. But do spell your last name for the transcribers, it saves a lot of questions later. With that, we have LB 895 to be introduced by Senator Langemeier. And go ahead, please. Thank you.

LB 895

SENATOR LANGEMEIER: Thank you, Chairman. Good afternoon, Chairman Baker, members of Transportation and Telecommunications Committee. I am Senator Chris Langemeier, C-h-r-i-s, Langemeier, L-a-n-g-e-m-e-i-e-r. I am here at the request of the Nebraska Department of Motor Vehicles to introduce LB 895. This is a bill to amend state statute to comply with federal regulations and prevent the loss of federal highway funds. This funding affects the Nebraska Department of Roads and the Nebraska State Patrol Carrier Enforcement Division. A representative of the DMV will testify and also discuss the various changes requested by this bill and describe the penalties for nonconformance. This cleanup bill asks for three specific changes to CDL law. The first change, found on page 2 of the green copy, in Section 1, brings Nebraska state statute into compliance

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 3

LB 895

with federal exemptions for the military. Basically, this section exempts uniformed military personnel from the state CDL requirements when operating military vehicles. Section 1 describes military personnel to be included and Section 2 and 3 add the required federal language to be in compliance and bring the new language into Motor Vehicle Operator's License Act. The second change occurs in Section 4, at the top of page 4 of the green copy. This section has been amended to include the reference of jurisdiction that issues conforming licenses to accommodate properly licensed drivers from other countries. Currently, this would only include Canada and Mexico but, in the future, other nations could be recognized by federal governments for reciprocity proposed of driver's licenses. The final change is in Section 5 and is one license rule. Current law allows a driver from out of state to retain the driver's license from his or her state of residence and be issued a Nebraska CDL learner's permit while attending commercial driving school here in Nebraska. To remain in compliance with federal regulations, this bill amends state statute so that a trainee will have to get a CDL learner's permit issued in his or her own state of residence before coming to school in Nebraska or a trainee will have to apply for a Nebraska license with the CDL learner's permit after he or she arrives here and surrenders his or her license from the other state so that the trainee holds only one driver's license at a time. And with that, I thank the committee. If there's any questions, there will be further testimony by the DMV.

SENATOR BAKER: Okay, thank you, Senator Langemeier. Any questions of Senator Langemeier? Seeing none, thanks.

SENATOR LANGEMEIER: And I'll waive closing.

SENATOR BAKER: Okay. Testifiers in support of LB 895? Director Neth.

BEVERLY NETH: Good afternoon.

SENATOR BAKER: It's only fitting you have the first bill up.

BEVERLY NETH: (Exhibit 1) Good afternoon, Chairman Baker,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 4

LB 895

members of the committee. I am Beverly Neth, B-e-v-e-r-l-y N-e-t-h, director of the Department of Motor Vehicles. I do have my testimony, I'm sorry, for hand out. I'm here today to offer testimony in support of LB 895 and I want to begin by thanking Senator Langemeier for sponsoring the bill on behalf of the department. As you all know, the commercial driver license program is a federal program. CDLs, commercial driver licenses, are really regulated by the Federal Motor Carrier Safety Administration through its promulgated rules and regulations. One component of the federal rules is that each state is subject to an audit of its commercial driver license program by the FMCSA. The audit is obviously a way to ensure compliance with the federal rules. CDL audits are conducted in each state at least once every three years, and in May of 2005, the Nebraska DMV was subjected to such an audit. The specific changes that we are requesting in LB 895 were prompted by that audit and the following changes to Nebraska law were suggested for Nebraska to remain in compliance with the federal CDL requirements. I think Senator Langemeier's testimony really covered the requirements pretty well. The first one is that we would be changing the language that exempts military personnel from the requirements to have a commercial driver license while they're operating military vehicles. We have been a member of the CDL and complying with the CDL program since 1989. We have had a statutory military exemption since that time. However, the language does not mirror the exact federal language and the auditors are requesting that we redraft our language so that it mirrors the exact federal language. One of the things that the new language does is it adds some exemptions for some military personnel that we currently don't have, which include the Coast Guard. So we will now have our Coast Guard, will be able to, under the statutes, drive the military vehicles with the CDL exemption. We also have the issue of the reciprocity. Language was not broad enough so that it could include CDL holders from Canada and Mexico. The current language refers only to states. The new language that we are asking would replace the term state with jurisdiction. That is the accepted language, would allow other countries who issue a CDL or a driver license that conforms with CDL standards, we would be able to recognize that driver license then. The final section deals with the one license rule that is applicable to all CDLs.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 5

LB 895

Put simply, one license rule is that an individual who holds a CDL may only hold one license in one state at one time. Currently, we allow individuals who are residents of other states to be issued a CDL learner's permit called an LPC to keep their license from their home state while they're here attending a commercial driver training school. The May audit listed the current statutory scheme as an audit exception and it deemed it not to be in compliance with the federal regulations. So if LB 895 is adopted, persons who attend a commercial motor vehicle driver training school in Nebraska will need an LPC issued by their state of residency before they come to Nebraska for school or they will have to get a Nebraska LPC and surrender their existing license from their home state. I urge the committee to advance the bill. Failure to remain in substantial compliance with the federal CDL law has consequences. As Senator Langemeier outlined the federal law, first year of noncompliance is Federal Motor Carrier Safety Administration may withhold 5 percent of federal highway aid funds and the Motor Carrier Safety Assistance Program funds. The second and subsequent years of noncompliance, the penalty is the withholding of 10 percent of federal aid funds and MCSAP funds. I'll try to answer any questions the committee might have regarding LB 895.

SENATOR BAKER: Thank you. Questions? Senator Stuthman.

SENATOR STUTHMAN: Thank you, Senator Baker. Director Neth, how much different are the CDL licenses in the other countries? Are they compatible with ours? You made a statement there that, you know, if they come from Mexico or come from Canada, can they just be...is it similar or not?

BEVERLY NETH: You know, Senator, I am not sure that I...I certainly don't have a working knowledge of how Canada and Mexico, what are their requirements for issuing CDLs. And what I anticipate is that it's actually FMCSA who probably reviews those programs and determine whether or not they are compliant with our existing federal programs. They would then be advising the states whether or not we can accept those drivers. I think, right now, they do have a document that's pretty similar or a process that's pretty similar to what we have.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 6

LB 895

SENATOR STUTHMAN: Okay, thank you.

SENATOR BAKER: Senator Foley.

SENATOR FOLEY: The bottom line on the bill is if we don't do this, we're going to lose federal funds.

BEVERLY NETH: That is potentially the bottom line. There is a process that federal motor carrier has to go through in order to put a state out of compliance or to deem us to be in substantial noncompliance. They first would give us notice of the provisions of the federal law with which they believe us we're not requiring. We then would either have to take corrective actions or put together a strong argument why we think we are in compliance. That process generally it would take a while. I'm not aware of any state that's ever, ever been put out of compliance. But I will tell you that the Federal Motor Carrier Safety Administration is getting much more serious about compliance with CDL rules now. The environment seems to be that they actually are issuing notices to states and following through on some compliance issues. These are relatively minor changes to the CDL program and I believe you're going to hear from Mike Hybl, representing the trucking industry. I don't think that, I certainly would allow him to speak for himself, but I don't see them as onerous substantive changes to the laws.

SENATOR FOLEY: Very good, thank you.

SENATOR BAKER: Senator Smith.

SENATOR SMITH: Would that be the reason there's no fiscal impact?

BEVERLY NETH: Well, they really are program changes for us.

SENATOR SMITH: So no printing expenses, no...?

BEVERLY NETH: At this time, we would probably just...if there are any costs, they would be minimal. We would just absorb them within our IT budget as it stands right now.

SENATOR SMITH: Okay.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 7

LB 895

SENATOR BAKER: Any other questions? I have one that follows up Senator Stuthman's question. We're seeing more and more citizens of Australia, New Zealand, South Africa moving up for our summer and fall harvest. Have you had any...I've had some contact with that. Are you seeing that, too? Are those CDLs then accepted or can you give us a broad statement there?

BEVERLY NETH: There is actually probably another issue with respect to that is those individuals are trying to...they're here, as I understand the issue that I saw this summer, is there are individuals who are coming from another country and working for a limited period of time and returning to their country. They're not really residents of the state, nor are they nonresidents in the technical sense that we understand them to be. They fall in a very gray area of whether or not they are entitled to a commercial driver license through the current process that exists. There is a process for them to come into the country and obtain a driver license, but it takes a great deal of time. And that is the issue that we saw this summer was there are individuals coming in for harvest but they are not beginning their process quickly enough to allow them to get their CDL before they have to start working. It's a fairly complicated federal rule issue that we argued with them, fairly vehemently about, that we wanted to allow these people to access a nonresident driver license. But we couldn't give it to them. We were prohibited this year from doing that.

SENATOR BAKER: So the cases brought to me were they took them out of service, they were South Africans, simply took them out of service until they could get someone in those trucks with a valid United States CDL. This would give you jurisdiction over them, is that correct?

BEVERLY NETH: Well, it does. It's not that we don't potentially have jurisdiction. It's when, as I understand the issue, it's when those individuals are coming here. They're not engaging the process on a federal level to get their visas or their work permits early enough to allow us to accept their documentation to get through the process.

SENATOR BAKER: Okay, so those employers need to get that

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 8

LB 895

message to them now...

BEVERLY NETH: Yes.

SENATOR BAKER: ...for harvest next July.

BEVERLY NETH: Yes, and I'm certain that that would be very difficult to identify who might be available at that time frame.

SENATOR BAKER: That's the problem. Yeah, okay, so any other questions? Seeing none, thank you, Director Neth.

BEVERLY NETH: Thank you.

SENATOR BAKER: Next testifier in support of LB 895.

MIKE HYBL: Good afternoon, Senator Baker, members of the committee. My name is Mike Hybl, it's spelled H-y-b-l. I am the registered lobbyist for the Nebraska Trucking Association testifying in support on LB 895. The bill, I think the one area of concern I would raise with the bill but, as Director Neth stated, we are dealing with where Federal Motor Carrier Safety Administration has gone through the audit process and these are changes that need to be made. We have found that, over time, for individuals who come from other states to get, to attend a commercial driving school, the ability to use their out-of-state license in conjunction with the state issued CDL learner's permit, it's been a system that's worked well. Obviously, there's going to have to be some adjustment made to that. But I think the fact that this has been pointed out on the audit, I think it is incumbent on the department to conform the laws to the federal regulations. Hopefully, that's one area at the federal level that might be relooked, because I think it has worked well. Otherwise, given the nature of the bill and the sanctions that can be imposed upon the state, as well as commercial driver's license holders that the state program were to be decertified, then Nebraska operators essentially don't have authority to operate outside of other states with a Nebraska-based CDL. I would encourage you to move the bill to the floor and get it enacted. And with that, I'd take any questions you might have.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 9

LB 895, 832

SENATOR BAKER: Okay, thank you, Mike. Questions of Mr. Hybl? Seeing none, thank you.

MIKE HYBL: Thank you.

SENATOR BAKER: Any other testifiers in support of LB 895? Is there any negative testimony? Neutral? Seeing none, Senator Langemeier waived closing. That would conclude the hearing on LB 895. LB 832 is next. I see Senator McDonald to introduce the bill, LB 832. Welcome, Senator McDonald.

LB 832

SENATOR McDONALD: Thank you. Senator Baker and members of the Transportation and Telecommunications Committee, I'm Senator Vickie McDonald, representing the 41st Legislative District. LB 832 is a simple bill that corrects a problem in current statutes concerning school permits. Under current law, when a student has a school permit violation, the judge's only option is to revoke the school permit. The student whose school permit was revoked can apply for a provisional operator's permit when they reach 16. Because their school permit was revoked, they are required to file an SR-22 for three years and pay a \$125 reinstatement fee. This filing throws them into the high-risk category. Their insurance premiums are often four to five times higher than standard insurance rates. They may never have a driving violation on their record. Part of this problem was corrected in 2005 by Senator Langemeier's LB 675, which expanded the definition of the allowable use of a school permit. It now includes transportation to and from extracurricular activities and school-related activities at the school the student attends. In 2004, Senator Vrtiska's LB 353 corrected the language for learner's permit violations by adding "impoundment or" to the revocation language. Unfortunately, we didn't expand it to cover school permit violations. LB 832 adds two words to Section 60-4,124. All school permits will now be subject to impoundment or revocation. The judge will decide the proper punishment for the school permit violation. I encourage your advancement of LB 832 and thank you for your time and attention.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 10

LB 832

SENATOR BAKER: Thank you, Senator McDonald. Questions for Senator McDonald? Senator Smith.

SENATOR SMITH: What would be a common infraction where they would impound it rather than revoke it?

SENATOR McDONALD: Well, I think that's the judge's decision probably. You know, I'm not the judge that would be sitting there, but depending on the offense of the violation. If they were going to the grocery store maybe and just a few miles off and had a legitimate excuse, or if they were out just tootling around, being somewhere that's not even close to where they should be. But it's the judge's decision. So at least now they have the opportunity to have impoundment or revocation...

SENATOR SMITH: Okay.

SENATOR McDONALD: ...to revoke it.

SENATOR SMITH: Thank you.

SENATOR BAKER: Any other questions? I see none. We're going to get this school permit issue fixed one of these times. We've had these bills, a series of them, judges keep finding reasons to have senators introduce bills every year to fix it.

SENATOR McDONALD: And this one was brought to me by an insurance agent in my district because once they filed that SR-22, that puts them in high-risk category. And, because of that, insurance for a 16-year-old is high enough but to be in high risk without really having a violation is difficult sometimes. So need to correct some of the things and make it consistent across the board.

SENATOR BAKER: Okay, thank you. Any other questions or comments? I see none. Thank you, Senator McDonald.

SENATOR McDONALD: And I'll waive closing.

SENATOR BAKER: Testifiers in support of LB 832? I see none. Opposition? Neutral? Senator McDonald, are you

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 11

LB 832, 853

going to waive closing? I see no other testifiers.

SENATOR McDONALD: I'll waive.

SENATOR BAKER: Okay, thank you for being here. That closes the hearing on LB 832. LB 853, Senator Stuthman, one of our committee members, to introduce LB 853. Welcome, Senator Stuthman.

LB 853

SENATOR STUTHMAN: Good afternoon.

SENATOR BAKER: You look familiar. (Laughter)

SENATOR STUTHMAN: Senator Baker and members of the Transportation Committee, my name is Arnie Stuthman, A-r-n-i-e S-t-u-t-h-m-a-n. I introduced LB 853 on behalf of the Department of Motor Vehicles. I will give you just a little bit of an update as to what this bill does. And what this bill realistically does is updates the referencing dates to the federal law and multistate agreements in the Nebraska statute that affect the Department of Motor Vehicles. And the majority of it is just the updates as far as the date is concerned. And I'm sure there will be testimony from the department following me and if you have any questions, I would wish that you would ask them.

SENATOR BAKER: Okay, questions of Senator Stuthman? Seeing none...oh, Senator Smith.

SENATOR SMITH: In Section 7, 60-6,265, there are references to three different items. Can you tell me why there are three and not four?

SENATOR STUTHMAN: Section 7?

SENATOR SMITH: I'm just joking, I'm just joking.

SENATOR STUTHMAN: I could get you that answer at a later date. (Laughter)

SENATOR BAKER: Thank you, Senator Stuthman. Any other

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 12

LB 853

questions, comments? Seeing none, testifiers in support of
LB 853?

BEVERLY NETH: (Exhibit 1) I have my testimony. Chairman Baker, members of the committee, I am Beverly Neth, N-e-t-h B-e-v-e-r-l-y, director of the Department of Motor Vehicles, appearing before you today to offer testimony in support of LB 853. I want to thank Senator Stuthman for sponsoring the bill on behalf of the department. LB 853 amends the reference dates for three specific DMV programs that are governed by federal laws. First, it adopts the most recent version of the International Registration Plan, or IRP. Nebraska has been a member of IRP since 1975. Membership in IRP allows trucking companies in Nebraska to pay registration fees in Nebraska and for all states through which the company operates. The Motor Carrier Services Division of the department distributes the collected registration fees to other states based on the mileage the carrier travels. Generally speaking, IRP has made registration of trucks traveling in interstate commerce more efficient for the industry. These amendments will allow Nebraska to follow the IRP as it was revised on October 1, 2005. LB 853 also updates the references to federal regulations governing commercial motor vehicles and the issuance of commercial driver licenses. The change allows the DMV to follow the federal regulations as they existed on January 1, 2006. It is important for Nebraska to remain in compliance with the federal laws in this area. As you heard in earlier testimony, failure to comply with the laws could result in the loss of Nebraska Motor Carrier Safety Assistance Program funds as well as federal highway and aid funds. Finally, the bill also updates references to federal laws governing occupant protection systems, more commonly called seat belts, to incorporate the most recently published version of the federal rules through January 1, 2006. This does not represent any substantive requirements applicable to seat belts in Nebraska, but allows the states to reference the newest printing of federal rules, instead of the 2004 release. I will just say, this is an annual update that we do and I would urge the committee to move the bill forward.

SENATOR BAKER: Okay, thank you, Director Neth. Questions?
Senator Brown.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 13

LB 853

SENATOR BROWN: The previous, the Langemeier bill, is about a slightly different thing but it's about being in compliance with the federal rules. And I assume that probably LB 801 is a similar piece. And I realize that I'm speaking now about a bill that's going to have a hearing later. But is there any problem in putting these issues together in a bill to be advanced to the floor if it expedites things if they're all about compliance with federal legislation?

BEVERLY NETH: I don't think that there would be, no. I think that they all, they really are...they are really, as you say, separate and distinct issues. But I think that they all get to the same ends of compliance with the federal programs.

SENATOR BROWN: Okay, thank you.

SENATOR BAKER: Are we seeing an increase in IRP registrations in Nebraska? Since we have such major trucking companies based in Nebraska, although they have satellites all over the United States, are we seeing a net increase overall? Do you know, or...?

BEVERLY NETH: Well, I think our numbers have been pretty consistent for a while now. I mean, there are requirements in order for you to register in Nebraska, you need to be a Nebraska-based carrier which, I think, requires you to have your business here to have some of your fleet at least located here and operating out of Nebraska. That is something that I think that, when we look at the process for IRP and how many states handle IRP, IFTA, and SSRS registrations, Nebraska, I think, has a very good process for that. We have a one-stop shop system. And I think we have a very timely way that we work with the trucking industry. And so, you know, there is an opportunity, I think, for us to try to talk to the trucking industry more about how we do business here in a regulatory environment that's pretty friendly.

SENATOR BAKER: Are we...for instance, though, say a trucking company is Nebraska based, but they have a terminal in Chicago or Denver or wherever. Those trucks are still

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 14

LB 853, 947

licensed in Nebraska.

BEVERLY NETH: They're going to be licensed out of...

SENATOR BAKER: They are going to use our IRP and then, obviously, prorate it across the country.

BEVERLY NETH: Yes...I mean, Werner is a classic example of that, Crete Carrier, classic examples where they have satellites throughout. But their base is here in Nebraska and they register their vehicles through here.

SENATOR BAKER: So they're all carrying a Nebraska pro rata tag.

BEVERLY NETH: Um-hum.

SENATOR BAKER: Okay. Any other questions? Seeing none, thank you, Director Neth.

BEVERLY NETH: Thank you.

SENATOR BAKER: Testifiers in support of LB 853? Seeing none, testimony in opposition? Neutral? Don't see any more. Senator Stuthman raises his hand and waives closing. That concludes our hearing on LB 853. Senator Flood, next to introduce LB 947. Welcome, Senator Flood.

LB 947

SENATOR FLOOD: Thank you, Mr. Chairman. My inaugural appearance before your honorable committee.

SENATOR BAKER: We're easy to get along with. Not like the Judiciary Committee sometimes. (Laughter)

SENATOR FLOOD: Chairman Baker, members of the committee, my name is Mike Flood, F-l-o-o-d. I represent Madison County, District 19. I'm here today to introduce LB 947 on behalf of the Department of Motor Vehicles. The purpose of this bill is to amend the statutes governing Motor Carrier Services Division of the DMV to allow the division a quick and direct means to revoke trucking companies registered

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 15

LB 947

through the International Registration Plan and licensed by the International Fuel Tax Agreement if the company pays with an unfunded check. You may better know an unfunded check as a check that bounces or comes back as insufficient funds. The current law governing revocations for these IFTA fuel tax licenses and IRP registration requires that the department provide a trucking company 30 days' written notice before any action can be taken to revoke the company. The law also requires that if a company appeals the proposed action, the action is stayed until the appeal can be finalized. Under both the IFTA and IRP programs, there are a number of reasons why the department may revoke a carrier's IRP registration or IFTA license. LB 947 would not change the stay and appeal process for any other reason than payment with a check that bounces. This bill would only amend the statute so that if an unfunded check is returned to the Department of Motor Vehicles for one of these IRP or IFTA payments, the department would have to provide the company with seven days' written notice before it revoked the registration or license of the carrier. If the company appealed the proposed revocation action, the appeal would not stay the revocation action in the case of a bad check. It does provide that the action is immediately dropped if the company pays. The department says that the intent of this bill, and it is the intent of my bill, to adopt a narrowly focused procedure that will only be applied to carriers who present an unfunded check for what they owe and fail to make good. The Department of Motor Vehicles has advised me that the vast majority of trucking companies do comply with the law and that if a check bounces, most companies act quickly to make the check good after a simple phone call. This bill is focused solely on those very few carriers who pay with a bad check and refuse to respond until the department has the authority to revoke their license. Running without paying is unfair. It's an unfair commercial advantage for the noncomplying company against all the trucking companies that obey the rules. This bill gives the State Patrol, specifically Carrier Enforcement, the authority to pick up the credentials of trucking companies that have been revoked. Experience has shown the department that when the credentials are picked up, companies make payment in full to get back on the road. The bill also removes an outdated reference to Carrier Enforcement officers since the Carrier Enforcement Division

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 16

LB 947

has been merged with the entire State Patrol. It's a pretty simple concept in this bill. Basically, if you bounce a check with the Department of Motor Vehicles and you're attempting to pay one of these registration fees, at seven days after notice, your license is revoked and the State Patrol will take that. It gets them to pay attention to the process and solve the problem. My immediate reaction when I first learned of this problem is, why can't we prosecute anybody that writes a bad check as a felony offender under our bad check statutes, found in Chapter 28? And right now, those statutes as written pertain to goods and services, not necessarily to registrations. And the Lancaster County Attorney's office has been hesitant to file actions against bad check issuers. So this is the most appropriate route to solve the problem.

SENATOR BAKER: Thank you, Senator Flood. Questions? Wouldn't you also say the timeliness of this gives them seven days and if you were to put it under bad check statutes or amend those, the time frame there could be weeks or months by the time it was processed and prosecuted?

SENATOR FLOOD: The only question I have is I think somebody has committed a fairly serious offense if they write a bad check over \$1,000 or even \$500. So I think that while it is a pretty serious offense criminally, this accomplishes what the DMV is looking for and that is making sure these folks have paid their registration and licensing fees. So I guess I'd defer to the department to answer any more questions and I'll waive my closing.

SENATOR BAKER: Okay. Any other questions of Senator Flood? Seeing none, thank you.

SENATOR FLOOD: Thank you for having me.

SENATOR BAKER: See that wasn't so bad, was it?

SENATOR FLOOD: No, very nice.

SENATOR BAKER: Thank you. Testifiers in support of LB 947?

BEVERLY NETH: (Exhibit 1) I have my testimony. Chairman Baker, members of the committee, I'm Beverly Neth. Do you

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 17

LB 947

want me to keep spelling it? B-e-v-e-r-l-y N-e-t-h.

SENATOR BAKER: I think transcribers probably know you by now.

BEVERLY NETH: Probably. Director of the Department of Motor Vehicles, appearing to offer testimony in support of LB 947. I want to thank Senator Flood for sponsoring this bill on behalf of the department. As Senator Flood outlined in his testimony, the purpose of the bill is to assist the Motor Carrier Services Division of the Department of Motor Vehicles in enforcing the laws governing vehicles registered through the International Registration Plan, known as IRP, and the International Fuel Tax Agreement, known as IFTA. IRP and IFTA are programs recognized by federal law that allow carriers engaged in interstate trucking to obtain credentials to travel seamlessly from jurisdiction to jurisdiction. IRP governs the registration of vehicles. IFTA governs the collection of fuel tax. The DMV Motor Carrier Services Division administers these programs in Nebraska. The programs allow the Nebraska trucking industry a one-stop shop to obtain paperwork and license plates that a vehicle needs to operate over the road. The Motor Carrier Services Division is responsible for the collection and distribution of all registration fees and fuel taxes due to Nebraska and to all other jurisdiction in which a Nebraska-based carrier reports commercial motor vehicle travel. Distribution of the fees and taxes collected is based upon a pro rata share of miles traveled in each jurisdiction. The Motor Carrier Services Division accepts both personal and business checks from trucking companies to pay these fees and taxes. LB 947 is aimed at the very small minority of companies that pay for registration fees or fuel taxes with a nonsufficient-fund check and then take advantage of the current law that provides for an extended collection period that could take up to four months to accomplish. I think maybe a real-life example of what has gone on might best illustrate the problem with the current statutory language. In January of 2005, the Motor Carrier Services Division received a check from a Nebraska-based carrier to register a small fleet of trucks. The carrier paid just over \$40,000. Pursuant to statutes and policies, the funds were processed by the State Treasurer's office, then distributed to...my written testimony is a little bit

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 18

LB 947

wrong, so I'm going to orally correct how this works. The funds are then distributed to the Motor Carrier Services Distributive Fund. Once a month, from the Distributive Fund, the funds are sent to, in shares, to the Property Assessment Taxation Fund, the Motor Vehicle Tax Fund, the Highway Trust Fund, and to all other jurisdictions in which the carrier reported travel in pro rata share. Subsequent to the distribution, the carrier's check, this would be the carrier who gave us the \$40,000 check, was returned to the Nebraska DMV marked nonsufficient funds. Following our current written policy, the motor carrier staff engaged in an informal process for the collection of funds. Which is, when we receive an insufficient-fund check from a carrier, we make a phone call and say, we got a check back and it's not good. The vast majority of them, it's an accounting error, they're very embarrassed, and we get a check within two or three days and things are made correct. Others, sometimes we have to make multiple phone calls. But we go through a fairly extensive, I will say, process of trying to collect the funds informally. In this particular instance, that informal process was unsuccessful. Finally, the staff invoked the current statutory process and sent the carrier a written notice from which the carrier is allowed 30 days to appeal. Nearly three months passed from the time the check was presented to the department, the check was returned from the State Treasurer's office, and informal and formal attempts to collect the funds were exhausted. The carrier finally paid in full when one of his trucks was stopped by the Nebraska State Patrol and placed out of service. He actually came in the very next day and made his \$40,000 payment to us in certified funds. However, from January to nearly April 1, the carrier ran his fleet of commercial motor vehicles without proper payment of registration fees. LB 947 proposes to shorten the written notice period from 30 days to 7 days and to remove the stay on appeal for nonsufficient-fund checks. The carrier would still have the right to appeal the action, but there would be no stay of the revocation of his credentials. Under current statutes, there are a number of reasons why a carrier may be revoked in the law. LB 947 does not affect any of these other existing revocation actions. Thirty-day written notice requirements and stay upon filing the appeal will remain in place for all cases except for nonsufficient-fund checks. LB 947 also allows the State Patrol to pick up the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 19

LB 947

credentials of carriers who have been revoked for nonsufficient funds. This process is parallel to the pick-up authority that State Patrol already has for carriers who have been revoked by federal authorities for safety violations. Senator Baker, I will attempt to answer any questions that you or the committee might have.

SENATOR BAKER: Thank you, Director Neth. Senator Foley.

SENATOR FOLEY: Director Neth, when that company came in finally with the \$40,000 payment, did the department levy any kind of a fine or penalty against them for being so tardy?

BEVERLY NETH: The only, I think, assessment we could've made against them, I do believe we charge either \$20 or \$25 for the...

SENATOR FOLEY: Bad check.

BEVERLY NETH: ...issuance of a bad check to us, yes.

SENATOR FOLEY: And did that occur in this instance, do you know?

BEVERLY NETH: I'm pretty sure we did that to him, yes. The other thing that we do is we put you on our list and any registration that you subsequently do with us, you are required to give us good funds or certified funds. We won't take a check from that individual for some time. We do allow people to make the case to us after a number of years have passed that they have been in good standing and we'll take them off the list, but...

SENATOR FOLEY: I wonder if we might not need to amend this bill to give you some authority to levy fines and penalties.

BEVERLY NETH: Well, certainly I don't believe we do have that authority right now. It certainly would be up to the committee if they felt that was appropriate. This is a very isolated problem that we have. I think we see on average about 24 checks a year that it's difficult for us to collect. We see more nonsufficient-fund checks than that, but the informal process generally takes care of those. But

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 20

LB 947

on average, about 24 would be the problems that are very tough for us to do.

SENATOR FOLEY: Is it typically the smaller companies, or...?

BEVERLY NETH: Well, this is...\$40,000 isn't particularly...

SENATOR FOLEY: That's a big...

BEVERLY NETH: ...a small company. He has multiple vehicles in a fleet. It can be. It can be one individual who has a truck that they've registered or it can be a multiple vehicle fleet carrier. It really runs the gamut. We've seen anywhere from \$10 to as high as, I believe, \$65,000.

SENATOR FOLEY: So at this point, the department is not asking for authority to levy fines.

BEVERLY NETH: No, I'm not. I think it has not been...we have had very good luck in ultimately collecting. And I think if we have the authority we're requesting in this bill, including the authority to revoke and allow the State Patrol to go and take their credentials, that should be enough to get the payment in a timely manner.

SENATOR FOLEY: Okay, thank you.

SENATOR BAKER: Any other questions? To give us some perspective, \$40,000, would that be 10 trucks?

BEVERLY NETH: That's probably in the neighborhood of, yeah, seven to ten trucks, potentially, depending upon...it really would depend upon the number of jurisdictions they're traveling in and the miles they're traveling. You know, Nebraska's fees, I think it's about \$1,700 per truck to register a Nebraska truck. But other states cost significantly more. And so the pro rata share of miles you're traveling and the states you're traveling in really drives your registration fees.

SENATOR BAKER: Did we not only have a bad check on this particular case but did you go ahead and disburse funds then to those other states?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 21

LB 947

BEVERLY NETH: I believe the distribution was made from the fund. And so...

SENATOR BAKER: So we were...

BEVERLY NETH: ...the Distributive Fund had a \$40,000 hole in it.

SENATOR BAKER: Yeah.

BEVERLY NETH: And that is certainly a key component of this is we have very little recourse. We can't go back to those other jurisdictions and ask for those funds back. Once it's been distributed, we're really on the hook for it. So it's a double compound for us.

SENATOR BAKER: Have you changed your policy then to say let's hold these checks until they clear before we disburse funds to other states they're traveling?

BEVERLY NETH: We're really under the IRP for those kinds of, that's a part of the agreement of the IRP, when we will make those distributions and how we do that.

SENATOR BAKER: I see. And how, there's a time frame there...

BEVERLY NETH: I believe there is.

SENATOR BAKER: ...I think Mr. Hybl may address that.

BEVERLY NETH: Yes.

SENATOR BAKER: So we were stuck, not just with a bad check, but we'd also disbursed funds to other states.

BEVERLY NETH: Yeah.

SENATOR BAKER: So, I see, okay. Senator Brown.

SENATOR BROWN: So does the 7-day, the change from 30 days to 7 days keep us from having released any of...does it fit under the time line of when we would release or does it make

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 22

LB 947

any difference?

BEVERLY NETH: I think that it probably doesn't make any difference given the dates that people have to register vehicles. They have the whole window of the month to register and it would be any given day that distributed. I don't know exactly when the funds come out of the Distributive Fund but it could have. The timing, I think, would be very difficult to nail down. I think if we shorten the period, certainly from 30 days to 7 days and take away the stay. The stay is, I think, a big part of the problem right now, that individuals can just delay the process of collection. That really should, I believe, by and large stop the problem.

SENATOR BAKER: Okay. Any other questions? Seeing none, thank you, Director Neth.

BEVERLY NETH: Thank you.

SENATOR BAKER: Additional testifiers in support?

MIKE HYBL: Senator Baker, members of the committee, again, my name is Mike Hybl. It's spelled H-y-b-l. I'm the contract lobbyist for the Nebraska Trucking Association, testifying in support of LB 947. We have had conversations with the Department of Motor Vehicles regarding the procedure that they do use when they get a bad check on an IRP, IFTA instance. I think the process that the department uses internally when coupled with this bill, as Director Neth said, does address probably the vast majority of the cases that they're going to find when someone absolutely refuses to make good on a check. Obviously, the fact that if someone can use the system, as has been demonstrated in other cases, not only creates a competitive advantage for someone for those that are out there properly paying fees. It does because of the way the IFTA and IRP funds are distributed does cause problems in terms of what we distribute to other states also impacts revenue for our own side of the Highway Trust Fund. So we would encourage you to move the bill to the floor. Can I take any questions anyone may have?

SENATOR BAKER: Okay, thank you. Senator Stuthman.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 23

LB 947

SENATOR STUTHMAN: Thank you, Senator Baker. Mike, the question that surfaces a lot of times to me is trucking firms that are licensed in other states, South Dakota, Wyoming, we're dealing with issues of the ones that are registered here in Nebraska, right?

MIKE HYBL: These would be...

SENATOR STUTHMAN: But they're all the same?

MIKE HYBL: Yeah, if they're based in another state, then...say it's a South Dakota state and their IRP, and they're registered under the IRP. Those fees, those payments that we're talking about here are being made to their home jurisdiction. So we're only, you know, the carriers we're talking about in this instance would be Nebraska-based carriers.

SENATOR STUTHMAN: Is there any special advantage to having home base in another state other than Nebraska when a lot of miles are traveled in Nebraska? But, realistically, the fees paid are per mile, really.

MIKE HYBL: It's, you know, when you get to the end of the day and what you're paying in terms of operation, your mileage is apportioned to all of the states that you operate in and you pay fees. The same with IFTA and the fuel tax. You're paying, you know, the rate for that state for the miles operated in that state.

SENATOR STUTHMAN: And the registration in another state is realistically immaterial then, is it? Or is there an advantage?

MIKE HYBL: I really don't see it as being an advantage because it's, you know, we have a number of our carriers that are home based in Nebraska but only 2-3 percent of their total miles are actually operated inside the state of Nebraska. They're in other jurisdictions for the majority of their miles.

SENATOR STUTHMAN: But the perception to the average person is, if they're registered in Wyoming, Wyoming is getting all

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 24

LB 947, 801

the money.

MIKE HYBL: They're getting 100 percent of the registration fee and if they fill up in Wyoming and drive across Nebraska and fill up when they get to Iowa, they're not paying motor fuel tax in Nebraska either for using roads and no, that's not the case. They're paying their proportionate share...

SENATOR STUTHMAN: Of the miles traveled.

MIKE HYBL: ...of the mileage that's operated in the state.

SENATOR STUTHMAN: Thank you.

SENATOR BAKER: Any other questions? Seeing none, thank you, Mike.

MIKE HYBL: Okay, thank you.

SENATOR BAKER: Any additional testifiers in support of LB 947? Seeing none, any opposition? Neutral? Senator Flood waived closing. That would close the hearing on LB 947, brings us to LB 801, a bill that I sponsored. The committee legal counsel will introduce it for me.

LB 801

JILL BECKER: Good afternoon, Senator Baker and members of the committee. My name is Jill Becker and I'm legal counsel for the committee, here to introduce LB 801. The purpose of LB 801 is to outright repeal several of our statutory provisions regarding the Public Service Commission that required the registration of intrastate hazardous material transporters. This legislation was initially passed in 1995 in response to the Federal Aviation Administration Authorization Act. That federal legislation made significant changes regarding the authority of states to regulate intrastate motor carriers. Senator Kristensen was a sponsor of this legislation and its purpose was to enact state legislation that was not preempted and was in relationship to safety regulation. The bill itself required the carriers to register with the commission and to provide evidence of financial responsibility, vehicle and equipment

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Transportation
and Telecommunications
January 17, 2006
Page 25

LB 801

ownership, and a description of the commodities transported. The Public Service Commission did not, as far as we know, require or actually implement this statutory provision within their agency. And in 1998, the federal regulations regarding hazardous material transportation were extended to intrastate carriers. Therefore, this state legislation is preempted and the purpose of the bill is simply to take it out of our Nebraska statutes. And the Public Service Commission is here if the committee would like to ask them any questions. Now I will answer any questions, too.

SENATOR BAKER: Thank you, Jill. Questions of Jill? Seeing none, I'm not...okay, thank you. Testifiers in support of LB 801? This might be a slam dunk here for the committee. Any opposition? Neutral? And I believe Jill is going to waive her closing. That would end the hearing on LB 801 and it would end the committee hearing for today. We certainly appreciate everyone attending and keeping it to the point and keeping us moving. That would conclude our hearing for today.